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6 UNITED STATES DISTRICT COURT
7 CENTRAL DISTRICT OF CALIFORNIA
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10 EDWARD GACIA,

11 Petitioner,

12 v.

13 WARDEN, Centinela State Prison,

14 Respondent.
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Case No. CV 17-5742-FMO (KK)

ORDER ACCEPTING FINDINGS
AND RECOMMENDATION OF
UNITED STATES MAGISTRATE
JUDGE

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17 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition for a Writ
18 of Habeas Corpus, the records on file, and the Report and Recommendation of the
19 United States Magistrate Judge. The Court has engaged in de novo review of those
20 portions of the Report to which Petitioner has objected. The Court accepts the
21 findings and recommendation of the Magistrate Judge.

22 In his objections to the Report, Petitioner also requests an evidentiary
23 hearing. However, in habeas proceedings, “an evidentiary hearing is not required
24 on issues that can be resolved by reference to the state court record.” Totten v.
25 Merkle, 137 F.3d 1172, 1176 (9th Cir. 1998); see also Earp v. Ornoski, 431 F.3d 1158,
26 1173 (9th Cir. 2005). “It is axiomatic that when issues can be resolved with
27 reference to the state court record, an evidentiary hearing becomes nothing more
28 than a futile exercise.” Totten, 137 F.3d at 1176. Here, the Magistrate Judge

1 concluded all of Petitioner's claims could be resolved by reference to the state
2 court record. Accordingly, the Court denies Petitioner's request for an evidentiary
3 hearing.

4 IT IS THEREFORE ORDERED that Judgment be entered (1) denying the
5 Petition for a Writ of Habeas Corpus; and (2) dismissing this action with prejudice.

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7 Dated: January 8, 2018

8 /s/
HONORABLE FERNANDO M. OLGUIN
9 United States District Judge